

**MONTANA DEPARTMENT OF AGRICULTURE
AGRICULTURAL SCIENCES DIVISION
HELENA, MONTANA**

**TITLE 80, CHAPTER 8
SECTIONS
80-8-101 THROUGH 80-8-405
MONTANA PESTICIDES ACT**

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The Montana Code and Constitution is at: http://leg.state.mt.us/css/mtcode_const/default.asp.

**TITLE 80, CHAPTER 8
MONTANA PESTICIDE ACT**

PART 1 - GENERAL ADMINISTRATION

<u>MCA</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
80-8-101	SHORT TITLE	1
80-8-102	DEFINITIONS	1
80-8-103	PURPOSE	4
80-8-104	ADMINISTRATION	5
80-8-105	RULES	5
80-8-106	ADMINISTRATIVE PROCEDURES	6
80-8-107	NOTICE - PUBLIC INFORMATION	6
80-8-108	ADVISORY COUNCIL	7
80-8-109	EDUCATIONAL PROGRAMS	8
80-8-110	COOPERATION WITH OTHER AGENCIES	8
80-8-111	(TEMPORARY) WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM	9
80-8-112	(TEMPORARY) DEPOSIT OF WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING FEES	9
80-8-113	THROUGH 80-8-115 RESERVED	10
80-8-116	PESTICIDE MANAGEMENT ACCOUNT - DEPOSIT OF FEES AND PENALTIES - INVESTMENT	10
80-8-117	PESTICIDE CLEAN-UP SPECIAL REVENUE ACCOUNT	10
80-8-118	THROUGH 80-8-119 RESERVED	10
80-8-120	LOCAL PESTICIDE REGULATION	11
80-8-121	PENALTY	12

**PART 2
REGISTRATION AND LICENSING**

80-8-201	REGISTRATION	12
80-8-202	PROHIBITED ACTS	14
80-8-203	COMMERCIAL APPLICATOR	15
80-8-204	APPLICATION OF APPLICATOR'S LICENSE	16
80-8-205	COMMERCIAL OPERATOR	16
80-8-206	APPLICATOR'S AND OPERATOR'S EXAMINATION	16
80-8-207	DEALERS	17
80-8-208	DEALER'S EXAMINATION	17
80-8-209	FARM APPLICATORS	17
80-8-210	LICENSING NONRESIDENTS	18
80-8-211	REVOCATION OF LICENSES AND PERMITS	19

80-8-212	RETAIL SALE OF PESTICIDES - EDUCATION PROGRAM.....	19
<u>MCA</u>	<u>CONTENTS</u>	<u>PAGE NO</u>
80-8-213	GOVERNMENT AGENCIES	20
80-8-214	LIABILITY.....	21

PART 3 ENFORCEMENT AND PENALTIES

80-8-301	REPORT OF LOSS OR DAMAGE - EFFECT OF FAILURE TO REPORT.....	21
80-8-302	SAMPLING AND ANALYSIS	21
80-8-303	EMBARGO	21
80-8-304	INVESTIGATION AND ENFORCEMENT AUTHORITY.....	22
80-8-305	GENERAL VIOLATIONS - COMPLIANCE ORDERS	23
80-8-306	PENALTIES.....	24

PART 4 MODEL SCHOOL INTEGRATED PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM

80-8-401	SHORT TITLE	26
80-8-402	STATEMENT OF POLICY.....	26
80-8-403	DEFINITIONS.....	26
80-8-404	MODEL SCHOOL INTEGRATED PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM.....	26
80-8-405	POLICYMAKING AUTHORITY.....	27

CHAPTER 8 MONTANA PESTICIDES ACT

Part 1

General Administration

80-8-101. Short title. This chapter may be cited as the "Montana Pesticides Act".

80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating

the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests. The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all onchlorophyll-bearing plants of a lower order than mosses and liverworts), such as rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) applies if the preparation is highly toxic to man, determined as provided in 80-8-105 ; and if the pesticide contains arsenic in any form, the ingredient statement must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health and human services; state experiment stations; state

agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living humans or undue hazard to the environment;

(v) the label of the retail package that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to humans or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except a virus on or in living humans or other animals, that is normally considered a pest or that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product

derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant that grows where not wanted.

80-8-103. Purpose. The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vectorborne diseases. However, the protection of man and his essential needs--water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous--is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

80-8-104. Administration. This chapter shall be administered by the department.

80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to humans;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which must be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed \$5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306;

(q) establishing fees for training courses and materials;

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected

under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and must encompass all reasonable factors that the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 must be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department must be made in writing and must be available at the department for public inspection. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department must include and be based upon written findings of fact. A copy of any rule or order certified by the department must be received in evidence in all courts of this state with the same effect as the original.

(Subsections (2)(r) and (2)(s) terminate December 31, 2003--sec. 1, Ch. 362, L. 1999.)

80-8-106. Administrative procedures. The administration of this chapter and all rulemaking and hearing functions under this chapter shall be conducted in accordance with the Administrative Procedure Act.

80-8-107. Notice -- public information. (1) As used in this section, the following definitions apply:

(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is

responsible for the operation of the building, the tenant or the tenant's building manager.

(b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:

- (i) a building that is used for educational, office, or institutional purposes; or
- (ii) a library, museum, school, hospital, auditorium, dormitory, or university building.

(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:

(a) be permanently displayed if the pesticide is applied on a regular basis;

(b) be posted at the time of the application if the pesticide is not applied on a regular basis;

(c) contain the name of the pesticide applied; and

(d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.

(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.

(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.

(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).

(6) Except as provided in Title 80, chapter 15, the department may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person.

80-8-108. Advisory council. (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of \$25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(3) The council may request that the department hold a public hearing to assist it in

gathering factual data and information on the special problems assigned it.

80-8-109. Educational programs. (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of a state agency or of the Montana cooperative extension service.

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section.

80-8-110. Cooperation with other agencies. (1) The department may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department and the department of environmental quality shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to wastes that are toxic, radioactive, corrosive, flammable, irritants, or strong sensitizers or that generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

80-8-111. (Temporary) Waste pesticide and pesticide container collection, disposal, and recycling program. (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.

(6) The department shall consult affected local governments before implementing the collection program under this section. (Repealed on occurrence of contingency--secs. 2, 3(2), Ch. 362, L. 1999.)

80-8-112. (Temporary) Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees. (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to 80-8-111(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided for in 80-8-111. Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action. (Repealed on occurrence of contingency--secs. 2, 3(2), Ch.

362, L. 1999.)

80-8-113 through 80-8-115 reserved.

80-8-116. Pesticide management account -- deposit of fees and penalties -- investment.

(1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

- (a) the cost of equipment and facilities;
- (b) the cost of inspecting, investigating, analyzing, and examining:
 - (i) pesticide products;
 - (ii) applicators, operators, and other users of pesticides;
 - (iii) dealers and retailers selling pesticides;
 - (iv) pesticide equipment, storage, disposal, and operational facilities; and
- (c) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund.

80-8-117. Pesticide cleanup special revenue account. (1) There is a pesticide cleanup special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the pesticide cleanup account any civil penalties collected under 80-8-306.

(3) The funds must be used by the department for cleanup and associated costs when a responsible party cannot be identified and located or if the responsible party is unable or unwilling to clean up the pesticide contamination and there is an imminent need to protect agriculture, health, or the environment.

(4) Unencumbered and unexpended funds remaining in the pesticide cleanup account at the end of the fiscal year may not lapse but must be carried forward for the stated purpose unless appropriated by subsequent legislative action.

(5) If a responsible party is identified and located after expenditure of the funds in the pesticide cleanup account, the department may initiate recovery of the funds through a voluntary agreement or in district court.

80-8-118 through 80-8-119 reserved.

80-8-120. Local pesticide regulation. (1) (a) A unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102, to provide notification when applying a pesticide, subject to the following provisions:

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.

(ii) A sign must be:

(A) at least 4 inches in height and 5 inches in width; and

(B) made of weather-resistant material if used for outdoor application.

(iii) A sign must contain:

(A) the words "pesticide application"; and

(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.

(iv) A sign must be posted:

(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;

(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;

(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.

(v) Notification for an application by a mosquito control district or a weed management district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.

(vi) Posting or notification is not required for the following:

(A) a spot treatment of an area that is less than 100 square feet;

(B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

(C) an application on land classified as agricultural land or forest land for taxation purposes;

(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;

(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;

(F) an application on a railroad facility or right-of-way;

(G) an application on a public utility facility or right-of-way.

(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:

(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and

(ii) fund the costs, including but not limited to:

(A) educating its citizens of the ordinance's requirements;

(B) compensating personnel to enforce the ordinance; and

(C) prosecution of a violation of the ordinance.

(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commercial applicator.

(2) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105 (3)(a).

(3) Except as provided in subsections (1) and (2), a unit of local government may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(4) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1).

80-8-121. Penalty. A person who violates a notification ordinance adopted pursuant to 80-8-120:

(1) is subject to a written warning for the first violation;

(2) is guilty of a misdemeanor and upon conviction may be fined not more than \$50 for the second violation; and

(3) is guilty of a misdemeanor and upon conviction may be fined not more than \$500 for a third or subsequent conviction.

Part 2

Registration and Licensing

80-8-201. Registration. (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105 (3) and in subsection (8) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of \$90 for each pesticide registered. The applicant shall pay an annual fee of \$90 for:

(a) each emergency exemption requested by the state as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136p;

(b) a special local need registration, as provided in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c)(1); or

(c) an experimental-use permit registration, as provided in 7 U.S.C. 136c.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105 (3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The department, the department of public health and human services, and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The departments shall use the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of public health and human services and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of public health and human services, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the department, the department of public health

and human services, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, public health and human services, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated.

80-8-202. Prohibited acts. (1) It is unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce between points within this state any of the following:

(a) any pesticide which has not been registered pursuant to the provisions of 80-8-201 or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration or if the composition of a pesticide differs from its composition as represented in connection with its registration or if registration or reregistration has been refused, revoked, canceled, or suspended. The department of agriculture may allow a change in the labeling or formula of a pesticide within a registration period without requiring reregistration of the product when such change does not adversely affect the product for its intended use and if proper application therefor is made.

(b) any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there be one, through which the required information on

the immediate container cannot be clearly read, a label bearing:

- (i) the name and address of the manufacturer, registrant, or person for whom manufactured;
- (ii) the trade and chemical name, brand, or trademark under which said article is sold;
- (iii) the net weight or measure of the content, subject to such reasonable variations as the department may permit;
- (c) any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in 80-8-105 , unless the label shall bear, in addition to any other matter required by this chapter:
 - (i) the skull and crossbones;
 - (ii) the word "poison" prominently in red on a background of distinctly contrasting color;
 - (iii) a statement of an antidote for the pesticide;
- (d) the pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored, as provided by regulations issued in accordance with this chapter, or any other white powder pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the environment and the feasibility of such coloration or discoloration, shall by regulations require to be distinctly colored or discolored, unless it has been so colored or discolored. The department may exempt any pesticide to the extent that it is intended for a particular use from the coloring or discoloring required or authorized by this section if it determines that such coloring or discoloring for such use is not necessary for the protection of the public health and the environment.
- (e) any pesticide which is adulterated or misbranded, or any device which is misbranded.
- (2) It is unlawful for any person to:
 - (a) detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or rules promulgated hereunder or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this chapter;
 - (b) use for his own advantage or reveal, other than to the department or proper officials or employees of the state or the courts of this state in response to a subpoena, to physicians or to veterinarians or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of 80-8-201.

80-8-203. Commercial applicator. (1) It is unlawful for a person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. An application for a pesticide applicator's license must be accompanied by a fee of \$45. The provisions of this subsection do not apply to a person employed only to operate equipment used for the application of a pesticide if the person has no financial interest or other control over the equipment other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators must be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided in 80-8-205.

(3) A veterinarian licensed as provided in Title 37, chapter 18, part 3, is not required to be licensed to apply nonrestricted pesticides, provided that the veterinarian registers with the department each year. The veterinarian must meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of \$10 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar year, provided that pesticide applicators applying for renewal of license shall do so on or before March 1 of that calendar year. Any applicator applying for renewal of license after March 1 shall be assessed a \$25 late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that the individual has met all the federal aviation administration and the department of transportation requirements for aerial pesticide applicators.

80-8-205. Commercial operator. (1) The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

(2) The department may by rule establish a fee to be paid by commercial operators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112. (Subsection (2) terminates December 31, 2003--sec. 1, Ch. 362, L. 1999.)

80-8-206. Applicator's and operator's examination. (1) The department of agriculture shall publish and distribute or have available upon request such information as may be helpful to persons engaged in the application of pesticides, including information that may be required or which may appear upon any examination given to applicators and operators by the department.

(2) The department shall require an applicant for a license to show upon written examination that he possesses adequate knowledge concerning the proper use and application of pesticides under the classification for which he has applied, provided that the applicator and operator may not be required to take a reexamination upon renewal of

licensing.

80-8-207. Dealers. (1) It is unlawful for a person to sell, offer for sale, deliver, or have delivered within the state a pesticide without first obtaining a license from the department for each calendar year or portion of a year. A separate dealer's license and fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer shall furnish the department with the names and addresses of its field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of \$45. Dealers applying for renewal of a license shall do so on or before March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a \$25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means before completing a sale. The department may adopt rules concerning dealer verification of licenses and permits.

(4) The department shall assess an additional annual license fee of \$10 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians shall meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules.

80-8-208. Dealer's examination. Each applicant applying for a dealer's license and/or his employee(s) in charge of pesticide sales shall be required to pass a reasonable examination administered by the department. Dealers applying for relicensing may not be required to take an additional examination if they have met the department's requirements.

80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using a pesticide designated by the department as a restricted-use pesticide. The fee for the permit is \$35. The special-use permit is effective for 5 calendar years. The department may establish a staggered years system of issuing permits. Revenue generated by the permit fee must be expended in the following manner:

- (a) \$15 to the department to administer the permitting program;
- (b) \$5 to the Montana state university-Bozeman extension service for the development of educational materials for farm pesticide applicators; and
- (c) \$15 to the extension service of the county in which the permit applicant resides for farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting an agricultural commodity on property owned,

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending an approved training program. The department shall establish by rule a uniform system of administering the requalification training program. The department may credit only training related to the standards set forth in subsection (3).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to a farm applicator applying nonrestricted pesticides on the applicator's own land or on lands of neighbors if the farm applicator:

- (a) operates farm property and operates and maintains pesticide application equipment primarily for the applicator's own use;

- (b) is not regularly engaged in the business of applying pesticides for hire and does not represent to the public that the farm applicator is a pesticide applicator;

- (c) operates pesticide application equipment only in the vicinity of the applicator's own property and for the accommodation of immediate neighbors.

(7) (a) The department shall assess an additional permit fee of \$15 on farm applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

- (b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period. The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit renewal period.

- (c) Fees collected under this subsection (7) must be deposited in the state special revenue account pursuant to 80-8-112. (Subsection (7) terminates December 31, 2003--sec. 1, Ch. 362, L. 1999.)

80-8-210. Licensing nonresidents. Any nonresident applying for a license under this chapter to operate in Montana shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against the nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of

Montana over such nonresident applicant; provided, however, that any such nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The department shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be duly certified by the secretary of state.

80-8-211. Revocation of licenses and permits. (1) The department shall establish the policy and procedures on the revocation of licenses or permits. The department may refuse to grant or renew or may revoke or modify a license or permit, as the case may require, when the department is satisfied that the licensee or permittee is not qualified to sell, use, or apply pesticides under the conditions in the locality in which the licensee or permittee operates or has operated or that the licensee or permittee has committed any of the following acts, each of which is considered a violation of this chapter:

- (a) made false or fraudulent claims or recommendations through any media misrepresenting the effect of materials or methods to be used;
- (b) applied or sold unapproved or illegal materials or applied or sold a pesticide without possessing a current and appropriate license or permit;
- (c) operated in a faulty, careless, or negligent manner;
- (d) operated faulty or unsafe equipment;
- (e) refused or neglected to comply with the provisions of this chapter, rules adopted under this chapter, or any lawful order of the department;
- (f) refused or neglected to keep and maintain the records required by this chapter or to make reports when and as required;
- (g) made false or fraudulent records or reports;
- (h) operated equipment for the commercial application of a pesticide without having a license or permit;
- (i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;
- (j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide;
- (k) made false or misleading statements in connection with a pest inspection of land, crops, yards, or any premises in an attempt to induce any person to engage the licensee's or permittee's services to eliminate, control, or mitigate the alleged pest or made false or misleading statements concerning the effectiveness of any pesticide or its application;
- (l) failed to satisfy a judgment entered against the licensee or permittee as a result of a complaint concerning the use of a pesticide.

(2) Decisions of the department relating to the issuing of licenses or permits may be appealed.

80-8-212. Retail sale of pesticides -- education program. (1) The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department may also limit the retail sale of such designated pesticides to quantities up to a specific number of pounds or gallons and of such concentrations as would be sublethal

to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(2) Subject to the availability of funds, the department and the Montana state university-Bozeman extension service shall enter into a cooperative agreement to establish an education program for retailers and the general public on pests, pesticides, and alternative control methods.

80-8-213. Government agencies. (1) All state agencies, municipal corporations, or any other governmental agencies are subject to the provisions of this chapter and rules adopted under this chapter concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies are subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of \$50, which is valid only when an applicator or dealer is applying or selling pesticides for a state agency, municipal corporation, or any other governmental agency, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) (a) A governmental agency shall pay for each of its first four employee applicators:

(i) an annual applicator's fee of \$50; and
(ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.

(b) A governmental agency shall pay for each additional employee applicator:

(i) an annual applicator's fee of \$5; and
(ii) an additional fee of \$10 to fund the waste pesticide and pesticide container collection, disposal, and recycling program. The department may by rule adjust the disposal fee to maintain adequate funding for the administration of the waste pesticide and pesticide container collection, disposal, and recycling program. The fee may not be less than \$10 a year or more than \$15 a year.

(c) A government agency may not be required to pay more than \$600 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to 80-8-112.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing the courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee.

80-8-214. Liability. The department shall annually require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under

rules promulgated by the department.

Part 3

Enforcement and Penalties

80-8-301. Report of loss or damage -- effect of failure to report. (1) A person suffering loss or damage resulting from the use or application of any pesticide by any person shall, within 30 days from the time the occurrence of the loss became known to him, file with the department of agriculture a verified report of loss setting forth, so far as known to the claimant, the following:

- (a) name and address of claimant;
- (b) type, kind, and location of property alleged to be injured or damaged;
- (c) date the alleged injury or damage occurred;
- (d) name of person applying the pesticide and allegedly responsible for the loss or damage;
- (e) name of the owner or occupant of the property for whom such pesticide application was made.

(2) The filing of such a report or the failure to file such a report shall not be alleged in any complaint which might be filed in a court of law, and the failure to file shall not of itself be considered any bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by any person, the department may refuse to hold a hearing for the denial, suspension, or revocation of a license issued under this chapter until such report is filed. The filing of such report shall not constitute institution of a civil or criminal suit in any court, state or federal.

80-8-302. Sampling and analysis. (1) The department shall have the authority to sample, inspect, make analysis of pesticides or devices distributed within this state at such time and place and to such extent as it may deem necessary to determine whether such pesticides or devices are in compliance with the provisions of this chapter. The department is authorized with a warrant or the consent of the inhabitant or owner to enter upon any public or private premises including any vehicle of transport in order to have access to pesticides or devices and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from sources such as the Journal of the Association of Official Analytical Chemists.

(3) In all administrative or legal actions involving the composition, identification, or quantification of a pesticide, a certified copy of the official analysis signed by the department's authorized chemist shall be accepted as prima facie evidence of the determinations set forth therein.

80-8-303. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device is adulterated or misbranded, has not been registered under the provisions of 80-8-201 (5),

fails to bear on its label the information required by this chapter, or is a white powder pesticide and is not colored as required under this chapter, he shall affix to such article a tag or other appropriate marking giving notice thereof and stating that the article has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. Any person who removes or disposes of such detained or embargoed article by sale or otherwise, without prior permission, or removes or alters the tag or marking, is guilty of a misdemeanor and may be charged accordingly or may be subjected to appropriate administrative proceedings, or both.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of this chapter or rules adopted thereunder, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been executed, conditioned upon the proper labeling or processing of such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of such supervision have been paid.

80-8-304. Investigation and enforcement authority. (1) In enforcing this chapter, the department or its authorized agents, upon reasonable cause, may enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

- (a) equipment used for applying pesticides;
- (b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;
- (c) records on the selling or use of pesticides and the person's stock of pesticides;
- (d) handling, use, application, storage, and disposal of pesticides by any person;
- (e) pesticides being applied or to be applied and to sample the pesticides or agricultural commodities;
- (f) the use and application of a pesticide;
- (g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental samples;
- (h) a person's compliance with pesticide worker protection standards and labeling, including handlers and workers;

(i) a person's compliance with pesticide ground water and environmental protection agency endangered species standards and labeling; or

(j) a person's compliance with licensing, labeling, permitting, and certification requirements.

(2) The department is authorized to investigate all incidents involving the application, sale, introduction, or use of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents have a reasonable potential to adversely affect the public environment or persons.

(3) The investigation or inspection authority provided for in this section may be exercised over persons not possessing a required license or permit.

80-8-305. General violations -- compliance orders. (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for a person:

(a) to discard any pesticide or pesticide container in a manner that causes injury to humans, domestic animals, or wildlife or that pollutes any waterway in a way harmful to any wildlife in the waterway or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in a manner that endangers humans or the environment or that endangers food or any other products that may be transported, stored, displayed, or distributed with the pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner that is inconsistent with the labeling, as defined in 80-8-102 ; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for a person to manufacture, formulate, or store any registered pesticide or a component or byproduct of a registered pesticide in a manner that the pesticide, component, or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. The containment or confinement of odor is exempted from the provisions of this subsection.

(3) (a) The department may issue a compliance order to a person violating the provisions of 80-8-211 , the provisions of this section, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(b) The provisions of this subsection (3) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor the degradation of the pesticide in the soil will adversely affect

agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of environmental quality to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of environmental quality is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of environmental quality or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

80-8-306. Penalties. (1) A person convicted of violating any of the provisions of this chapter or the rules issued under this chapter or who misrepresents, prevents, or attempts to prevent the department or its authorized agent in performance of its duty in connection with the provisions of this chapter is guilty of a misdemeanor and shall be fined not less than \$100 but not more than \$1,500.

(2) The department or its authorized representative may apply to the district court of the county where a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of another county where a violation has occurred or is about to occur and the department may select and proceed in the court that is most appropriate under the circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter requires the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order. This chapter does not apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500 or be imprisoned for not more than 1 year, or both.

(5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this chapter as defined in subsection (5)(e), in addition to other penalties provided in this chapter, may be assessed a civil penalty by the department of not more than \$2,500 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over \$500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department warning, order, or administrative action authorized by this chapter.

(b) A civil penalty may not be assessed unless the person charged was given notice and opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

(c) (i) If after investigation the department determines that a major violation of this chapter has significantly harmed human life, welfare, or safety or affected agricultural commodities, livestock, or the environment in a manner that cannot be appropriately addressed by the penalties assessed in subsection (5)(a), the department may seek a civil penalty, not to exceed \$25,000 for each offense, by filing a complaint in district court.

(ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who willfully commits a major violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not more than \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(d) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to human health, agricultural commodities, livestock, or the environment.

(e) A major violation of this chapter includes:

(i) misuse of a pesticide that results in proven exposure of humans, agricultural commodities, or livestock or results in proven harm to human health, agricultural commodities, livestock, or the environment. As used in this subsection (i), "misuse" means the use, handling, or release of a pesticide by a person in a manner inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and loading rules or pesticide and container disposal rules.

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit;

(vi) noncompliance with pesticide worker protection standards and labeling;

(vii) noncompliance with pesticide ground water and environmental protection agency endangered species standards and labeling;

(viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and standards; or

(ix) reoccurrence of any identical violation of this chapter within 2 years of the first

violation.

(f) If the department is unable to collect the civil penalty or if a person fails to pay all or a portion of the civil penalty as determined by the department, the department may recover that amount by action in the appropriate district court.

Part 4

Model School Integrated Pest and Pesticide Management Safety Program

80-8-401. Short title. This part may be cited as the "Model School Integrated Pest and Pesticide Management Safety Program Act".

80-8-402. Statement of policy. The legislature finds and declares that:

(1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;

(2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;

(3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and

(4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

80-8-403. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture as provided for in 2-15-3001.

(2) "Director" means the director of agriculture as provided for in 2-15-3001.

(3) "School district" means a school district established according to Title 20, chapter 6.

80-8-404. Model school integrated pest and pesticide management safety program. (1) The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994. The model program must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children from exposure to pesticides and the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting school children from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists,

school personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program.

80-8-405. Policymaking authority. The department may adopt policies and guidelines to implement this part.